

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

MILOUS BROWN,

Plaintiff,

:

Case No. 2:19-cv-2425

- vs -

District Judge Michael H. Watson

Magistrate Judge Michael R. Merz

DAVID GRAY, WARDEN,

Belmont Correctional Institution, et al.,

Defendants.

:

DECISION AND ORDER DENYING MOTION TO STRIKE

This case is before the Court on Plaintiff's Motion (ECF No. 84) to Strike Defendant's [sic] Memorandum in Opposition to Motion for Declaratory Judgment and Temporary Restraining Order (ECF No. 78).

Plaintiff's Motion for Declaratory Judgment is certified by Plaintiff as having been served on Defendants by mail on April 28, 2022 (Certificate of Service, ECF No. 78, PageID 520). The Motion did not reach the docket until May 10, 2022. Under S. D. Ohio Civ. R. 7.2, Defendants' time to file a response expired May 19, 2022, per S. D. Ohio Civ. R. 7.2(a)(2), but the response (ECF No. 79) was not in fact filed until June 13, 2022. The Response was in fact untimely filed without Defendants having sought or obtained an extension of time to do so.

Although the Court has authority to strike untimely filed papers, in this instance the Court elects not to do so. Plaintiff's Motion for Declaratory Judgment mirrors a motion filed by Plaintiff while this case was on appeal and which the Sixth Circuit declined to consider for lack of jurisdiction. *Brown v. Gray*, Case No. 21-3386 at 8 (6th Cir. Mar. 28, 2022)(unpublished; copy at ECF No. 74). It also mirrors a motion filed in *Brown v. Chambers-Smith*, Case No. 2:22-2469 at ECF No. 2. Plaintiff claims to have made service of that Motion by mail on Defendants or their counsel on June 7, 2022. *Id.* at PageID 65. However, Plaintiff has not yet obtained service of initial process on any of the twelve Defendants nor has anyone entered an appearance as counsel.

Adoption and enforcement of an appropriate and constitutional policy for legal mail to and from prisoners is of obvious concern to the Court, both for prisoners who are litigants and because of our duty under 42 U.S.C. § 1983 to enforce constitutional rights in general. The Court therefore prefers to resolve these issues on the merits, rather than on procedural niceties.

Accordingly, the Motion to Strike is DENIED. All parties are cautioned, however, that the Court is prepared to enforce strictly rules and scheduling orders needed to prepare this case for decision.

July 5, 2022.

s/ *Michael R. Merz*
United States Magistrate Judge